

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DYSON, INC.,	)	
	)	Case No. 10-cv-08126
Plaintiff,	)	
	)	Judge Samuel Der-Yeghiayan
v.	)	
	)	Magistrate Judge Maria Valdez
BISSELL HOMECARE, INC.,	)	
	)	
Defendant.	)	
	)	

**BISSELL HOMECARE INC.'S RESPONSE  
TO DYSON'S MOTION TO COMPEL**

Defendant BISSELL Homecare, Inc. ("BISSELL") hereby responds to Dyson, Inc.'s ("Dyson") Motion to Compel, filed on April 28, 2011 ("Motion").

Dyson's Motion is premature. The parties conducted a meet-and-confer on April 27, 2011, during which they discussed Dyson's interrogatories and BISSELL's responses. *See* Exhibit A (4/28/11 e-mail exchange among the parties' counsel). Negotiations about the interrogatories were continued, and on April 28 BISSELL confirmed to Dyson "that we [BISSELL] are considering the offer you [Dyson] made yesterday to grant an extension of time for BISSELL to respond substantively to Dyson's interrogatories, and that we would let you have our position on this matter by Monday." *See id* (11:28 a.m. e-mail by BISSELL's counsel). Instead, Dyson files its Motion immediately. *See id*. (11:31 a.m. e-mail by Dyson's counsel). There was no "impasse" (Motion at p. 4).

Dyson's discovery tactics burden the Court with an unnecessary motion on an issue the parties are in the process of resolving. Furthermore, Dyson's argument is mistaken. BISSELL legitimately objected that the number of Dyson's interrogatories exceeds the permissible limit.

"[T]he proper method for objecting to a set of interrogatories that exceeds 25 is not completely clear." *Holmes v. Trustees of Purdue University*, No. 4:06-CV-114, 2008 WL 656263 (N.D. Ind. Mar. 5, 2008). Responding substantively to some of the interrogatories may result in waiver of the objection. *See, e.g., Allahverdi v. Regents of the University of New Mexico*, 228 F.R.D. 696, 698 (D.N.M. 2005 ) ("**When a party believes that another party has asked too many interrogatories, the party to which the discovery has be propounded should object to all interrogatories or file a motion for protective order. The responding party should not answer some interrogatories and object to the ones to which it does not want to respond. By answering some and not others, the defendants waived this objection.**") (emphasis added) (cited in *Holmes*). To preserve its objections, BISSELL appropriately declined to answer Dyson's interrogatories.

Dyson's Motion is premature and mistaken on the law. BISSELL continues its attempts to resolve the issue by negotiation. As BISSELL previously told Dyson, on Monday, May 2, BISSELL is submitting a proposal to Dyson concerning Dyson's interrogatories. It is hoped that this proposal will obviate further proceedings on Dyson's rash motion.

Dated: May 2, 2011

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,  
HILLIARD & GERALDSON LLP

By: /s/ Uli Widmaier  
David C. Hilliard (IL Bar No. 1217496)  
Uli Widmaier (IL Bar No. 6226366)  
Ashly A. Iacullo (IL Bar No. 6289801)  
311 South Wacker Drive  
Suite 5000  
Chicago, Illinois 60606  
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*Attorneys for Defendant, BISSELL Homecare, Inc.*

# **EXHIBIT A**

**Uli Widmaier - Re: Meet and Confer Follow Up**

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**From:** "David Callahan" <dcallahan@kirkland.com>  
**To:** "Uli Widmaier" <uw@pattishall.com>  
**Date:** 4/28/2011 11:31 AM  
**Subject:** Re: Meet and Confer Follow Up  
**CC:** "Ashly Iacullo" <AI@pattishall.com>, "Ann Marie Wahls" <awahls@kirkland.com>, "David Hilliard" <DCH@pattishall.com>, "Mary Beth Fournier" <MBF@pattishall.com>

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Uli:

That is correct. There is no way we will be able to present our motion before Monday; we are hopeful that Bissell will reconsider what we view as entirely baseless objections and agree to substantively respond to this fundamental discovery. To the extent Bissell agrees to do so, we can file a stipulation to that effect with the Court and will have no need to set a briefing schedule. To the extent Bissell decides not to reconsider its objections, we will be able to set a briefing schedule to allow this issue to be promptly present to the Court. Regards.

David Callahan, P.C.  
 Kirkland & Ellis LLP  
 300 North LaSalle  
 Chicago, Illinois 60654

312-862-2182 - phone  
 312-543-8673 - mobile  
 312-862-2200 - fax  
 david.callahan@kirkland.com

"Uli Widmaier" <uw@pattishall.com>

04/28/2011 11:28 AM

To "David Callahan" <dcallahan@kirkland.com>

cc "Ann Marie Wahls" <awahls@kirkland.com>, "Ashly Iacullo" <AI@pattishall.com>, "David Hilliard" <DCH@pattishall.com>, "Mary Beth Fournier" <MBF@pattishall.com>

Subject Re: Meet and Confer Follow Up

David,

This is to confirm what we just discussed on the phone. I called you to inform you that we are considering the offer you made yesterday to grant an extension of time for BISSELL to respond substantively to Dyson's interrogatories, and that we would let you have our position on this matter by Monday, which is the date the parties agreed that we will provide you with our substantive responses to the requests for admission, as well as with a revised draft protective order.

You responded that you will move to compel today or tomorrow.

Regards,  
 Uli

>>> "David Callahan" <dcallahan@kirkland.com> 4/28/2011 11:16 AM >>>

Uli:

We are at an impasse; we've simply looked at the case you cited and determined it does not change the status quo of our meet and confer yesterday.

David Callahan, P.C.  
Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654

312-862-2182 - phone  
312-543-8673 - mobile  
312-862-2200 - fax  
david.callahan@kirkland.com

"Uli Widmaier"  
<uw@pattishall.com>

To "David Callahan" <dcallahan@kirkland.com>

04/28/2011 11:14 AM

cc "Ann Marie Wahls" <awahls@kirkland.com>, "Ashly Iacullo" <AI@pattishall.com>, "David Hilliard" <DCH@pattishall.com>, "Mary Beth Fournier" <MBF@pattishall.com>

Subject Re: Meet and Confer Follow Up

David,

Thank you for your note. We will take the matter under advisement and let you have our position by Monday.

Regards,  
Uli

>>> "David Callahan" <dcallahan@kirkland.com> 4/28/2011 8:47 AM >>>

Uli:

We carefully reviewed the case you cited during our meet and confer yesterday, along with some of the cases it cites. WE do not believe that it comes close for the proposition that service of more than 25 interrogatories (you know from our call we do not agree with the way in which you have counted our five interrogatories to be several hundred) allows you to refuse to answer any. While your case cites one case that so holds, it also cites a case which does not reach that result. Critically, the case itself does not reach that result; the court there turning the issue back to the parties to work out.

It appears we are at an impasse on this issue, as well as the confidentiality issue, as to which you did not cite any legal authority. Regards.

David Callahan, P.C.  
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